IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14552 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CORE HEALTHCARE LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 14552 of 2004
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1
NOTICE NOT RECD BACK for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 08/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 This petition challenges the action on behalf of Central Excise Department initiating coercive measures for recovery of demand of Central Excise Duty. According to the petitioner the petitioner company is a Sick Industrial Company in whose case proceedings by way of appeal and reference are pending before Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and Board for Industrial and Financial Reconstruction (BIFR) under the provisions of Sick Industrial Companies (Special Provisions) Act,1985 (SICA).

2 Heard the learned Counsel for the petitioners and for the respondents RULE. Mr.Jitendra Malkan waives service. On behalf of the respondents it is not disputed that the petitioner company is a sick industrial company and the proceedings under the relevant provisions of SICA are pending before the Board or the Appellate Authority. The learned Counsel for the respondents has very fairly invited attention to the decision in case of Tata Davy Ltd. Vs. State of Orissa, AIR 1998 SC 2928.

3 In the aforesaid decision, the Apex Court has reiterated and applied the ratio laid down in case of The Gram Panchayat and Another Vs. Shree Vallabh Works Ltd. and others, AIR 1990 SC 1017 as follows :

> "11. The Vallabh Glass Works judgment covers these appeals. Arrears of taxes and the like due from sick industrial companies that satisfy the conditions set out in Section 22(1) of the Central Act cannot be recovered by coercive process unless the said Board gives its consent thereto."

In light of the ratio of the said decision considering the fact that there is no dispute as to applicability of the provisions of SICA, the petitioners are entitled to protection in terms of Section 22 of SICA. The respondent authorities are therefore directed not to take any coercive measures for recovery of duty in light of pendency of proceedings before the Appellate Authority and the Board.

4 Needless to state that this direction shall be applicable only in relation to the demand pertaining to

the period for which reference is made and is pending (Dy.Commercial Tax Officer and others Vs. Corromandal Pharmaceuticals and others, AIR 1997 SC 2027).

5 The petition stands allowed accordingly to the aforesaid extent and is disposed of. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt